

1 David Miller, SBN: 104139  
2 MILLER & ANGSTADT  
3 A Professional Corporation  
4 1910 Olympic Boulevard, Suite 220  
5 Walnut Creek, CA 94596  
6 Telephone: 925-930-9255  
7 Facsimile: 925-930-7595

5 Attorneys for Defendants  
NORTHWEST STAFFING RESOURCES, INC.,  
6 an Oregon corporation; RESOURCE  
7 STAFFING GROUP, INC., an Oregon  
corporation DULCICH STAFFING, LLC, an  
Oregon limited liability corporation

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

11 U-HAUL COMPANY OF CALIFORNIA,  
Inc., a California corporation.

CASE NO. C07-3848 JCS

**ANSWER OF DEFENDANT  
RESOURCE STAFFING GROUP, INC.,  
an Oregon corporation TO COMPLAINT  
FOR DAMAGES, RESTITUTION,  
INJUNCTIVE AND DECLARATORY  
RELIEF FOR FRAUDULENT  
INDUCEMENT; FRAUD; UNLAWFUL,  
UNFAIR BUSINESS PRACTICES;  
FALSE AND MISLEADING  
ADVERTISING; AIDING AND  
ABETTING/INDUCING CONSPIRACY  
TO VIOLATE; BREACH OF  
CONTRACT; CONTRACTUAL  
INDEMNITY and EQUITABLE  
INDEMNITY AND CONTRIBUTION**

Plaintiffs,

v.<sub>1</sub>

15 NORTHWEST STAFFING RESOURCES,  
16 INC., an Oregon corporation; RESOURCE  
17 STAFFING GROUP, INC., an Oregon  
corporation; DULCICH STAFFING, LLC,  
an Oregon limited liability corporation; and  
DOES 1 TO 25 inclusive.

### Defendants.

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21                   Defendant RESOURCE STAFFING GROUP, INC., an Oregon corporation; (hereafter  
22 "Defendant RSG") having removed this matter from The Superior Court of California, for the  
23 County of Orange responds to the Complaint (hereafter called "Complaint") of U-HAUL  
24 COMPANY OF CALIFORNIA, Inc., a California corporation, (hereafter called "Plaintiff" or  
25 "Plaintiff U-HAUL") filed in the Superior Court and in its own behalf as follows:

#### JURISDICTION AND VENUE

1. Responding to paragraph 1 of the Complaint, Defendant RSG does not deny the

1 subject matter of Plaintiff's claims. Responding further, Defendant RSG denies each and  
2 every, all and singular, of the allegations therein.

3       2.     Responding to paragraph 2 of the Complaint, Defendant RSG denies the basis  
4 for venue in the Superior court of Orange County. Responding further, Defendant RSG asserts  
5 that the venue is appropriate in this Court, as the operative events recited in the Complaint took  
6 place within this judicial district.

## **THE PARTIES**

8           3.     Responding to paragraph 3 of the Complaint, Defendant RSG admits the  
9 allegations therein.

10       4.     Responding to paragraph 4 of the Complaint, Defendant RSG admits that it and  
11 Northwest Staffing Resources, Inc., are Oregon Corporations, that Dulcich Staffing, LLC is an  
12 Oregon Limited Liability Corporation, and that Defendant RSG operates and has conducted  
13 business operations in California and other states. Responding further, Defendant RSG denies  
14 each and every, all and singular, of the remaining allegations.

15       5.     Responding to paragraph 5 of the Complaint, Defendant RSG denies each and  
16     every, all and singular, of the allegations therein.

17       6.     Responding to paragraph 6 of the Complaint, Defendant RSG is without  
18 information sufficient to form a belief as to the information stated in the first sentence of the  
19 paragraph. Responding further Defendant RSG denies each and every, all and singular, of the  
20 allegations therein.

21       7.     Responding to paragraph 7 of the Complaint, Defendant RSG is without  
22 information sufficient to form a belief as to the precise meaning intended for the allegations  
23 stated regarding “control,” “controlled and managed,” “commingled and intermingled  
24 moneys,” “unity of ownership,” “interest,” “credit and goodwill,” “capitalization,”  
25 “instrumentality,” “conduit,” “adjunct,” “and/or alter ego,” and is uncertain as to the meaning  
26 of Plaintiff’s usage of each or all of the stated terms, which are understood as each subject to a  
27 variety of possible meanings, and on that basis denies each and every, all and singular, of the

1 allegations therein.

2 8. Responding to paragraph 8 of the Complaint, Defendant RSG denies each and  
3 every, all and singular, of the allegations therein.

4 9. Responding to paragraph 9 of the Complaint, Defendant RSG, denies  
5 each and every, all and singular, of the allegations therein.

6 10. Responding to paragraph 10 of the Complaint, Defendant RSG, denies  
7 each and every, all and singular, of the allegations therein.

8 **GENERAL ALLEGATIONS APPLICABLE TO ALL CAUSES OF ACTION**

9 **MISREPRESENTATIONS AND MISLEADING ADVERTISING**

10 11. Responding to paragraph 11 of the Complaint, Defendant RSG denies  
11 each and every, all and singular, of the allegations therein.

12 12. Responding to paragraph 12 of the Complaint, Defendant RSG, denies  
13 each and every, all and singular, of the allegations therein, specifically as they relate to the  
14 dispute between Plaintiff and itself, and particularly because they imply that it has failed with  
15 respect to some unnamed and specific obligation to Plaintiff which Plaintiff required of it.

16 13. Responding to paragraph 13 of the Complaint, Defendant RSG, denies  
17 each and every, all and singular, of the allegations therein, specifically as they relate to the  
18 dispute between Plaintiff and itself as it arose during the limited time that it provided services  
19 to Plaintiff at Plaintiff's Fremont, California facility. Responding further, RSG denies each  
20 and every, all and singular, of the remaining allegations therein.

21 14. Responding to paragraph 14 of the Complaint, Defendant RSG admits that it  
22 provided certain payroll and benefit services to Plaintiff specifically requested for certain  
23 workers provided and designated by Plaintiff at Plaintiff's Fremont, California facility.  
24 Responding further, Defendant RSG, except as specifically admitted herein, denies each and  
25 every, all and singular, of the remaining allegations therein.

26 15. Responding to paragraph 15 of the Complaint, Defendant RSG denies  
27 each and every, all and singular, of the allegations therein.

## **THE STAFFING SERVICES AGREEMENT**

16. Responding to paragraph 16 of the Complaint, Defendant RSG admits that it signed a Staffing Services Contract (hereafter "Contract") prepared and provided entirely by Plaintiff, and that it provided specific services set forth therein, but only as requested by Plaintiff, but not all services set forth therein that were not requested by Plaintiff, that it provided the limited services specifically requested and required by Plaintiff while the Contract was in effect and until it was terminated by Defendant RSG in accordance with its terms, or prematurely by Defendant. Responding further, except as admitted herein, RSG denies each and every, all and singular of the remaining allegations other than as described in this response.

17. Responding to paragraph 17 of the Complaint, Defendant RSG admits that it provided some services requested by Plaintiff consistent with its own marketing materials to the limited extent that Plaintiff specifically required them, for certain workers at Plaintiff's Fremont, California facility who had been employed there by another staffing firm and/or Plaintiff and who were in place when provided by Plaintiff, and thereafter performed services only to the extent requested and required by Plaintiff under terms dictated by Plaintiff. Defendant RSG admits that it utilized an employee handbook and, as required by Plaintiff, had the workers provided to it by Plaintiff execute a variety of employment-related documentation. Responding further, except as admitted herein specifically, Defendant RSG denies each and every, all and singular, of the allegations therein.

18. Responding to paragraph 18 of the Complaint, Defendant RSG admits only the accuracy of the language the Contract and that it provided only those services described in it as were specifically requested and required by Plaintiff, and no described services that were not specifically requested and required of it. Responding further, except as admitted herein, Defendant RSG denies each and every, all and singular of the remaining allegations.

19. Responding to paragraph 19 of the Complaint, Defendant RSG denies each and every, all and singular of the allegations therein. Responding further, Defendant RSG affirms that Plaintiff determined which of the temporary workers would be retained and instructed

1 Defendant RSG to inform a limited number of (approximately three) workers designated by  
2 Plaintiff of their termination as directed by Plaintiff during the time Defendant RSG provided  
3 services to Plaintiff.

4 20. Responding to paragraph 20 of the Complaint, Defendant RSG does not deny  
5 the content of the cited text of the Contract imposed and required by Plaintiff as a condition to  
6 Defendant RSG providing the limited services or any services it was specifically requested to  
7 provide to Plaintiff. Responding further, except as admitted herein, Defendant denies each and  
8 every, all and singular of the remaining allegations.

9 21. Responding to paragraph 21 of the Complaint, Defendant RSG admits that it  
10 promised to provided some but not all of the services described for and to the temporary  
11 employees working at Plaintiff's Fremont, California facility at the time Plaintiff engaged its  
12 services and only for the duration of its provision of services, subject to its contractual right to  
13 terminate those services upon thirty days written notice, as provided in Section XIX of the  
14 Contract Plaintiff prepared and required. (Complaint Ex. C, Section IV and XIX).  
15 Responding further and except as specifically admitted herein, Defendant RSG denies each and  
16 every, all and singular of the allegations therein.

17 22. Responding to paragraph 22 of the Complaint, Defendant admits the content of  
18 the cited language of the Contract which Plaintiff prepared and required it to sign. Responding  
19 further, Defendant RSG affirms that their to their knowledge, there were no "employee  
20 grievances" during the limited time it provided services to Plaintiff regarding certain workers  
21 at Plaintiff's Fremont facility, that Plaintiff provided the sole on-site supervision of said  
22 workers, that Plaintiff neither advised it of nor requested that it "address" the alleged  
23 grievances of any of workers, that it terminated no workers, except for those described in  
24 paragraph 19 of this response, as directed and required by Plaintiff to notify those workers  
25 whose terminations Plaintiff directed. Responding further, and except as specifically admitted  
26 herein, Defendant RSG denies each and every all and singular, of the remaining allegations  
27 therein.

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1       23. Responding to paragraph 23 of the Complaint, Defendant RSG admits the  
2 content of the cited language of the Contract which Plaintiff prepared and required it to sign.  
3 Responding further, Defendant RSG affirms that it complied with the cited language during the  
4 duration of its provision of services and until the time Plaintiff prematurely dismissed it,  
5 following its lawful termination of the Contract in accordance with the terms thereof.  
6 Responding further, and except as admitted herein, Defendant RSG denies each and every all  
7 and singular, of the remaining allegations therein.

8       **REPUDIATION OF REPRESENTATIONS AND AGREEMENTS**

9       24. Responding to paragraph 24 of the Complaint, Defendant RSG is without  
10 sufficient information to formulate a belief or respond to the allegations of the first sentence of  
11 the paragraph, and on that basis denies each and every, all and singular, of the allegations  
12 therein. Responding further, Defendant RSG admits that a representation petition was filed by  
13 Machinist District Lodge 190, Automotive Machinist Lodge 1546, (hereafter "the Union") on  
14 which Plaintiff and only Defendant RSG were described as "Name of Employer," and admits  
15 that a "First Amended Petition" deleting Defendant RSG was filed by the same Union.

16       25. Responding to paragraph 25 of the Complaint, Defendant RSG admits the  
17 authenticity of the document attached to the Complaint as Exhibit "D." Responding further,  
18 and except as admitted herein, Defendant RSG denies each and every, all and singular, of the  
19 allegations therein.

20       26. Responding to paragraph 26 of the Complaint, Defendant RSG denies each and  
21 every, all and singular, of the allegations therein.

22       27. Responding to paragraph 27 of the Complaint, Defendant RSG admits that it  
23 provides a variety of services to its clients, as needed and required by them, in some cases  
24 providing workers and in others providing only payroll and related services, as the client  
25 requires. Responding further, Defendant RSG denies each and every, all and singular, of the  
26 allegations therein.

27       28. Responding to paragraph 28 of the Complaint, Defendant RSG is currently  
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1 without information sufficient to form a belief as to the allegation therein and, on that basis,  
2 denies each and every, all and singular, of the allegations therein.

3       29. Responding to paragraph 29 of the Complaint, Defendant RSG admits that on  
4 the date stated, it timely and lawfully notified Plaintiff of the termination of the Contract  
5 prepared by and provided by Plaintiff (but apparently not signed by Plaintiff), in accordance  
6 with its terms (Complaint Exhibit "C"). Responding further and to the extent not admitted  
7 herein, Defendant RSG denies each and every, all and singular, of the allegations therein.

8       30. Responding to paragraph 30 of the Complaint, defendant RSG admits that for  
9 the limited time that it provided the payroll and benefit services specifically requested by  
10 Plaintiff prior to the termination of the Contract, Defendant complied with that contract and in  
11 doing so provided all services specifically requested by Plaintiff. Responding further, and  
12 except as admitted herein, Defendant RSG denies each and every, all and singular, of the  
13 remaining allegations therein.

14       31. Responding to paragraph 31 of the Complaint, Defendant RSG admits that the  
15 Acting Regional Director for Region 32, of the National Labor Relations Board, located in  
16 Oakland, California, issued a Decision and Direction of Election based on the petition  
17 described in paragraph 24 of this responsive pleading in a case in which Defendant RSG was  
18 not a party, and found Plaintiff to be the employer of a collective bargaining unit of employees  
19 under section 9(a) of the National Labor Relations Act (29 U.S.C. § 159(a)), and that the  
20 employees in that collective bargaining unit included "employees supplied by temporary  
21 employment agencies...." Responding further, and as except as specifically admitted herein,  
22 Defendant RSG denies each and every, all and singular, of the allegations therein.

23       32. Responding to paragraph 32 of the Complaint, Defendant RSG is without  
24 sufficient information to form a belief as to what Plaintiff is itself "informed and believes" and  
25 for that reason denies the allegations based thereon. Responding further, Defendant RSG  
26 denies each and every, all and singular, of the allegations therein.

27       33. Responding to paragraph 33 of the Complaint, Defendant RSG is informed and  
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1 believes and on that basis admits that the Union and other persons or entities filed a series of  
2 unfair labor practice charges and an amended representation petition against Plaintiff as well as  
3 its parent entity U-Haul International, Inc., (hereafter "UHI") on or about August 3, September  
4 14, and December 20, 2004, and on February 3, 2005, and February 23, 2006, alleging that  
5 Plaintiff and UHI had committed a variety of unfair labor practices beginning in June 2004 and  
6 continuing in July 2004, and to December 2004, including terminations of employees in July  
7 2004 and January 2005, refusing a Union demand for bargaining, and that no unfair labor  
8 practice charges were filed against Defendant RSG or any other defendant named herein. Also  
9 based on information and belief, Defendant RSG admits that Plaintiff and UHI chose to settle  
10 the unfair labor practice claims rather than defend them, thereby incurring liability.  
11 Responding further and except as admitted herein, Defendant RSG denies each and every, all  
12 and singular, of the remaining allegations therein.

13 34. Responding to paragraph 34 of the Complaint, Defendant RSG admits that it has  
14 refused to indemnify Plaintiff for conduct for which it bears no responsibility because it  
15 committed "no acts, errors and omissions" of the type described in the indemnification  
16 provision of the Contract and has never been charged by the National Labor Relations Board or  
17 any other agency for having done so. Responding further, and except as specifically admitted  
18 herein, Defendant RSG denies each and every, all and singular, of the allegations therein.

19 35. Responding to paragraph 35 of the Complaint, Defendant RSG denies each and  
20 every, all and singular, of the allegations therein.

21 **THE CONTRACTUAL INDEMNITY CLAUSES AND**  
22 **DEFENDANTS' REFUSAL TO INDEMNIFY UHC**

23 36. Responding to paragraph 36 of the Complaint, Defendant RSG acknowledges  
24 that it alone signed the Contract which contains the full text of its Section V, which Plaintiff  
25 has chosen to not state fully in paragraph 36. Responding further, Defendant RSG affirms that  
26 its potential liability under Section V was not for its own non-compliance with laws described  
27 therein, which it is not claimed by Plaintiff that it violated, and which did not include conduct  
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1 of Plaintiff in which it did not join or participate. Except as admitted herein. Defendant RSG  
2 denies each and every, all and singular, of the remaining allegations herein.

3 37. Responding to paragraph 37 of the Complaint, Defendant RSG admits that it  
4 alone signed the Contract containing the full text of the Contract and affirms that Section IV,  
5 cited in this paragraph does not contain the language cited by Plaintiff. Further, Defendant  
6 RSG affirms that the language cited by Plaintiff constitutes an incomplete and selective  
7 recitation of the contractual indemnification language in the Contract, and which does not  
8 require that it indemnify Plaintiff for Plaintiff's own volitional conduct. Responding further,  
9 and except as specifically admitted herein, Defendant RSG denies each and every, all and  
10 singular, of the remaining allegations therein.

11 38. Responding to paragraph 38 of the Complaint, Defendant RSG admits that it  
12 received a demand for indemnification and affirms that it responded. Responding further, and  
13 except as admitted herein, Defendant RSG denies each and every, all and singular, of the  
14 remaining allegations therein.

15 39. Responding to paragraph 39 of the Complaint, Defendant RSG, based on  
16 information and belief, admits that Plaintiff chose to settle the unfair labor practice charges  
17 filed against it alone, and that it has contended and continues to contend that it has no liability  
18 to Plaintiff, for indemnity or otherwise. Responding further, and except as specifically  
19 admitted herein, Defendant RSG denies each and every, all and singular, of the allegations  
20 therein.

#### 21 ATTORNEYS' FEES

22 40. Responding to paragraph 40 of the Complaint, Defendant RSG admits that it  
23 alone, of the named defendants, signed the Staffing Services Contract and that it contains a  
24 provision (not the provision stated) providing for an award of "reasonable" attorneys fees and  
25 costs to a party to the Contract and against the other party to the Contract in the event there is a  
26 breach or default of the Contract. Responding further, and except as specifically admitted  
27 herein, Defendant RSG denies each and every, all and singular, of the allegations therein.

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## **FIRST CAUSE OF ACTION**

### **(Fraudulent Inducement Promise Without Intent to Perform)**

**(Against All Defendants)**

41. Responding to paragraph 41 of the Complaint, Defendant RSG admits, denies and otherwise re-pleads its responses to the allegations in the Complaint paragraphs 1 through 40, inclusive.

42. Responding to paragraph 42 of the Complaint, Defendant RSG denies each and every, all and singular, of the allegations therein.

43. Responding to paragraph 43 of the Complaint, Defendant RSG denies each and every, all and singular, of the allegations therein.

44. Responding to paragraph 44 of the Complaint, Defendant RSG denies each and every, all and singular, of the allegations therein.

45. Responding to paragraph 45 of the Complaint, Defendant RSG denies each and every, all and singular, of the allegations therein.

46. Responding to paragraph 46 of the Complaint, Defendant RSG denies each and every, all and singular, of the allegations therein. Responding further, Defendant RSG affirms that any expenses Plaintiff may have incurred in representing and defending itself in the National Labor Relations Board proceedings described in paragraphs 24 and 31 of this pleading were the result of conduct by third parties which began and were known to Plaintiff before Defendant RSG was fraudulently induced by Plaintiff to provided services at Plaintiff's Fremont, California facility, and which resulted from Plaintiff's volitional conduct, while Defendant RSG was not a party.

47. Responding to paragraph 47 of the Complaint, Defendant RSG denies each and every, all and singular, of the allegations therein.

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**SECOND CAUSE OF ACTION**  
**(Fraud-Intentional Misrepresentation)**  
**(Against All Defendants)**

48. Responding to paragraph 48 of the Complaint, RSG admits, denies and otherwise re-pleads its responses to the allegations in Complaint paragraphs 1 through 47, inclusive.

49. Responding to paragraph 49 of the Complaint, Defendant RSG denies each and every, all and singular, of the allegations therein.

50. Responding to paragraph 50 of the Complaint, Defendant RSG denies each and every, all and singular, of the allegations therein.

51. Responding to paragraph 51 of the Complaint, Defendant RSG denies each and every, all and singular, of the allegations therein.

52. Responding to paragraph 52 of the Complaint, Defendant RSG denies each and every, all and singular, of the allegations therein.

53. Responding to paragraph 53 of the Complaint, Defendant RSG denies each and every, all and singular, of the allegations therein.

54. Responding to paragraph 54 of the Complaint, Defendant RSG denies each and every all and singular of the allegations therein.

55. Responding to paragraph 55 of the Complaint, Defendant RSG denies each and every, all and singular, of the allegations therein.

**THIRD CAUSE OF ACTION**  
**Fraud-Intentional Concealment**  
**(Against All Defendants)**

56. Responding to paragraph 56 of the Complaint, Defendant RSG here admits, denies and otherwise re-pleads its responses to the allegations in Complaint paragraphs 1 through 55 inclusive.

57 Responding to paragraph 57 of the Complaint, Defendant RSG denies each and

1 every, all and singular, of the allegations therein.

2 58. Responding to paragraph 58 of the Complaint, Defendant RSG denies each and  
3 every, all and singular, of the allegations therein.

4 59. Responding to paragraph 59 of the Complaint, Defendant RSG denies each and  
5 every, all and singular, of the allegations therein.

6 60. Responding to paragraph 60 of the Complaint, Defendant RSG denies each and  
7 every, all and singular, of the allegations therein.

8 61. Responding to paragraph 61 of the Complaint, Defendant RSG denies each and  
9 every, all and singular, of the allegations therein.

10 62. Responding to paragraph 62 of the Complaint, Defendant RSG denies each and  
11 every, all and singular, of the allegations therein.

12 63. Responding to paragraph 63 of the Complaint, Defendant RSG denies each and  
13 every, all and singular, of the allegations therein.

14 **FOURTH CAUSE OF ACTION**

15 **(Unlawful, Unfair and Fraudulent Business Practices, Cal. B & P Code § 17200, et. Seq.)**

16 **(Against All Defendants)**

17 64. Responding to paragraph 64 of the Complaint, Defendant RSG admits, denies  
18 and otherwise re-pleads its responses to Complaint paragraphs 1 through 63, inclusive.

19 65. Responding to paragraph 65 of the Complaint, Defendant RSG denies each and  
20 every, all and singular, of the allegations therein. Responding further, Defendant RSG asserts  
21 that this cause of action may only be pursued as a class action under California Business and  
22 Professions Code Sections 17203 and 17204. Plaintiff has not done so, and so this claim must  
23 be dismissed.

24 66. Responding to paragraph 66 of the Complaint, Defendant RSG denies each and  
25 every, all and singular, of the allegations therein. Responding further, Defendant RSG asserts  
26 that this cause of action may only be pursued as a class action under California Business and  
27 Professions Code Sections 17203 and 17204. Plaintiff has not done so, and so this claim must  
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1 be dismissed.

2 67. Responding to paragraph 67 of the Complaint, Defendant RSG denies each and  
3 every, all and singular, of the allegations therein. Responding further, Defendant RSG asserts  
4 that this cause of action may only be pursued as a class action under California Business and  
5 Professions Code Sections 17203 and 17204. Plaintiff has not done so, and so this claim must  
6 be dismissed.

7 68. Responding to paragraph 68 of the Complaint, Defendant RSG denies each and  
8 every, all and singular, of the allegations therein. Responding further, Defendant RSG asserts  
9 that this cause of action may only be pursued as a class action under California Business and  
10 Professions Code Sections 17203 and 17204. Plaintiff has not done so, and so this claim must  
11 be dismissed.

12 69. Responding to paragraph 69 of the Complaint, Defendant RSG denies each and  
13 every, all and singular, of the allegations therein. Responding further, Defendant RSG asserts  
14 that this cause of action may only be pursued as a class action under California Business and  
15 Professions Code Sections 17203 and 17204. Plaintiff has not done so, and so this claim must  
16 be dismissed.

17 70. Responding to paragraph 70 of the Complaint, Defendant RSG denies each and  
18 every, all and singular, of the allegations therein. Responding further, Defendant RSG asserts  
19 that this cause of action may only be pursued as a class action under California Business and  
20 Professions Code Sections 17203 and 17204. Plaintiff has not done so, and so this claim must  
21 be dismissed.

22 **FIFTH CAUSE OF ACTION**

23 **(False and Misleading Advertising)**

24 71. Responding to paragraph 71 of the Complaint, Defendant RSG here admits,  
25 denies and otherwise re-pleads its responses to Complaint paragraphs 1 through 70 inclusive.  
26 Responding further, Defendant RSG asserts that this cause of action may only be pursued as a  
27 class action under California Business and Professions Code Sections 17203 and 17204.

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1 Plaintiff has not done so, and so this claim must be dismissed.

2 72. Responding to paragraph 72 of the Complaint, Defendant RSG denies each and  
3 every, all and singular, of the allegations therein.

4 73. Responding to paragraph 73 of the Complaint, Defendant RSG denies each and  
5 every, all and singular, of the allegations therein.

6 74. Responding to paragraph 74 of the Complaint, Defendant RSG denies each and  
7 every, all and singular, of the allegations therein.

8 75. Responding to paragraph 75 of the Complaint, Defendant RSG denies each and  
9 every, all and singular, of the allegations therein.

10 76. Responding to paragraph 76 of the Complaint, Defendant RSG denies each and  
11 every, all and singular, of the allegations therein.

12 **SIXTH CAUSE OF ACTION**

13 **(Aiding and Abetting/Inducing/Conspiracy to Violate Business and Professions Code**

14 **sections 17200 and 17500)**

15 **(Against All Defendants)**

16 77. Responding to paragraph 77 of the Complaint, Defendant RSG here admits,  
17 denies and otherwise re-pleads its responses to Complaint paragraphs 1 through 76 inclusive.  
18 Responding further, Defendant RSG asserts that this cause of action may only be pursued as a  
19 class action under California Business and Practices Code Sections 17203 and 17204. Plaintiff  
20 has not done so.

21 78. Responding to paragraph 78 of the Complaint, Defendant RSG denies each and  
22 every, all and singular, of the allegations therein.

23 79. Responding to paragraph 79 of the Complaint, Defendant RSG denies each and  
24 every, all and singular, of the allegations therein.

25 80. Responding to paragraph 80 of the Complaint, Defendant RSG denies each and  
26 every, all and singular, of the allegations therein.

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## **SEVENTH CAUSE OF ACTION**

### **(Breach of Contract)**

(Against All Defendants)

81. Responding to paragraph 81 of the Complaint, Defendant RSG admits, denies and otherwise re-pleads its responses to paragraphs I through 80 of the complaint, inclusive.

6       82.     Responding to paragraph 82 of the Complaint, Defendant RSG admits that it  
7     alone and none of the other defendants signed the “Staffing Services Contract” (hereafter  
8     “Contract”) prepared and proffered to it by Plaintiff as “U-Haul,” and upon information and  
9     belief denies that Plaintiff, or another entity described in it as “U-Haul” executed the contract,  
10    and that the content of the Contract is as stated in Exhibit C of the Complaint. Responding  
11    further, Defendant RSG, upon information and belief, now asserts that no such written  
12    Contract was consummated between Plaintiff and Defendant RSG, and so the only services  
13    which Defendant RSG provided were pursuant to an “ad hoc” oral agreement where under  
14    Defendant RSG provided payroll and fringe benefits services for workers designated by  
15    Plaintiff or other “U-Haul” entities. Responding further, and except as specifically admitted  
16    herein, Defendant RSG denies each and every, all and singular of the allegations therein.

17 83. Responding to paragraph 83 of the Complaint, Defendant RSG denies each and  
18 every, all and singular of the allegations therein.

19 84. Responding to paragraph 84 of the Complaint, Defendant RSG denies each and  
20 every, all and singular of the allegations therein.

## **EIGHTH CAUSE OF ACTION**

### **(Contractual Indemnity)**

(Against All Defendants)

85. Responding to paragraph 85 of the Complaint, Defendant RSG here admits, denies and otherwise re-pleads its responses to Complaint paragraphs 1 through 84 inclusive. Responding further, Defendant RSG admits that it alone and none of the other defendants signed the "Staffing Services Contract" prepared and proffered to it by Plaintiff and upon

1 information and belief denies that Plaintiff, or another entity described in the Contract as "U-  
2 Haul" executed the contract, and that the content of the Contract is as stated in Exhibit C of the  
3 Complaint. Responding further, Defendant RSG, upon information and belief, now asserts that  
4 no such Contract was consummated between Plaintiff and Defendant RSG, and so the only  
5 services which Defendant RSG provided were pursuant to an "ad hoc" oral agreement where  
6 under Defendant RSG provided payroll and fringe benefits services for workers designated by  
7 Plaintiff or other "U-Haul" entities, which included no indemnity provision.

8 86. Responding to paragraph 86 of the Complaint, Responding to paragraph 82 of  
9 the Complaint, Defendant RSG admits that it alone and none of the other defendants signed the  
10 "Staffing Services Contract" prepared and proffered to it by Plaintiff, and upon information  
11 and belief denies that Plaintiff, or another entity described in it or another "U-Haul" entity  
12 executed the contract, and that the content of the Contract is as stated in Exhibit C of the  
13 Complaint. Responding further, Defendant RSG, upon information and belief, now asserts that  
14 no such Contract was consummated between Plaintiff and Defendant RSG, and so the only  
15 services which Defendant RSG provided were pursuant to an "ad hoc" oral agreement where  
16 under Defendant RSG provided payroll and fringe benefits services requests by Plaintiff for  
17 workers designated by Plaintiff or other "U-Haul" entities, and which included no indemnity  
18 provision. Responding further, and except as specifically admitted herein, Defendant RSG  
19 denies each and every, all and singular of the allegations therein.

20 87. Responding to paragraph 87 of the Complaint, Defendant RSG denies each and  
21 every, all and singular of the allegations therein.

22 88. Responding to paragraph 88 of the Complaint, Defendant RSG admits that it  
23 received a letter from Plaintiff's counsel demanding indemnification under the "Staffing  
24 Services Contract." However, because the letter was not attached to the Complaint, Defendant  
25 RSG cannot confirm that the letter referred to is in fact the same letter, and must therefore deny  
26 this allegation on that basis. Responding further, Defendant RSG admits that its responded to  
27 an August 4, 2006 letter in an August 9, 2006 letter, but denies the content of that letter as  
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1 described in the Complaint. Except as admitted herein, Defendant RSG denies each and every,  
2 all and singular of the remaining allegations therein.

3 89. Responding to paragraph 89 of the Complaint, Defendant RSG denies each and  
4 every, all and singular of the allegations therein.

5 90. Responding to paragraph 90 of the Complaint, Defendant RSG admits that  
6 Section 18 of the Contract, prepared and proffered to it by Plaintiff, contains an attorneys fees  
7 provision that the "prevailing party" is entitled to an award of attorneys fees and costs arising  
8 from a breach or default of the Contract, which contract if applicable at all, Defendant RSG,  
9 terminated in accordance with its terms on July 2, 2004. Responding further, Defendant RSG  
10 denies each and every, all and singular of the remaining allegations therein.

11 **NINTH CAUSE OF ACTION**

12 **(Equitable Indemnity and Contribution)**

13 **(Against All Defendants)**

14 91. Responding to paragraph 91 of the Complaint, Defendant RSG here admits,  
15 denies and otherwise re-pleads its responses to Complaint paragraphs 1 through 90 inclusive.

16 92. Responding to paragraph 92 of the Complaint, Defendant RSG denies each and  
17 every, all and singular of the allegations therein.

18 93. Responding to paragraph 93 of the Complaint, Defendant RSG denies each and  
19 every, all and singular of the allegations therein. Responding further, Defendant RSG affirms  
20 that the dismissal of employees for whom it provided services to Plaintiff without consultation  
21 with Defendant RSG was a course of action chosen by Plaintiff, was not required, but was one  
22 of the various alternatives open to Plaintiff, which it alone chose, and for which Defendant  
23 RSG bears no responsibility.

24 94. Responding to paragraph 94 of the Complaint, Defendant RSG denies each and  
25 every, all and singular of the allegations therein.

26 95. Responding to paragraph 95 of the Complaint, Defendant admits that Plaintiff  
27 demanded indemnification for its own volitional acts and conduct upon which Plaintiff was not  
28

1 consulted nor afforded an opportunity to determine or participate, and that Plaintiff refused or  
2 ignored Defendant's written request for an explanation of the facts and theories giving rise to  
3 the demand for indemnification. Responding further, and except to the extent admitted herein,  
4 Defendant RSG denies each and every, all and singular of the allegations therein.

5 **AFFIRMATIVE DEFENSES**

6 **FIRST AFFIRMATIVE DEFENSE**

7 Plaintiff's Complaint, and each and every cause of action alleged therein, fails to state  
8 facts sufficient to constitute a cause of action against Defendant RSG.

9 **SECOND AFFIRMATIVE DEFENSE**

10 Plaintiff's First Cause of Action alleged therein, fails to state facts sufficient to  
11 constitute a cause of action against Defendant RSG.

12 **THIRD AFFIRMATIVE DEFENSE**

13 Plaintiff's Second Cause of Action, fails to state facts sufficient to constitute a cause of  
14 action against Defendant RSG.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 Plaintiff's Third Cause of Action fails to state facts sufficient to constitute a cause of  
17 action against Defendant RSG.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 Plaintiff's Fourth Cause of Action fails to state facts sufficient to constitute a cause of  
20 action against Defendant RSG.

21 **SIXTH AFFIRMATIVE DEFENSE**

22 The Fifth Cause of Action fails to state facts sufficient to constitute a cause of action  
23 against Defendant RSG.

24 **SEVENTH AFFIRMATIVE DEFENSE**

25 Plaintiff's Sixth Cause of Action fails to state facts sufficient to constitute a cause of  
26 action against Defendant RSG.

#### EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's Seventh Cause of Action fails to state facts sufficient to constitute a cause of action against Defendant RSG.

### NINTH AFFIRMATIVE DEFENSE

Plaintiff's Eighth Cause of Action fails to state facts sufficient to constitute a cause of action against Defendant RSG.

#### TENTH AFFIRMATIVE DEFENSE

Plaintiff's Ninth Cause of Action fails to state facts sufficient to constitute a Cause of Action against Defendant RSG.

#### ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims based on Breach of Contract are barred inasmuch as Defendant RSG complied with Plaintiff's requirements under the "Staffing Services Contract" or an "ad hoc" oral argument until it was terminated by its terms or earlier, by Plaintiff. If the "Staffing Services Contract" could be at all enforceable, Plaintiff itself breached that agreement by unilaterally terminating and hiring employees ostensibly covered by it, by conducting a campaign in the pendency of the National Labor Relations Board representation proceeding as well as before and during the pendency of the National Labor Relations Board unfair labor practice proceedings without consultation with or permitting Defendant RSG any input on the defense of the proceeding, thereby itself breaching the alleged contract.

## TWELFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate its damages by its unilateral decision and volitional conduct without Defendant RSG's participation or consultation in its decisions and strategies in the National Labor Relations Board unfair labor practice proceedings.

### THIRTEENTH AFFIRMATIVE DEFENSE

Defendants are entitled to a set off against any claim for damages in the amount which Plaintiff could have avoided the liability for which it seeks indemnification or which is based upon its own unilateral volitional conduct.

#### FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint and each and every Cause of Action therein, is barred in whole or in part by the doctrine of laches.

## FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff Complaint and each and every Cause of Action therein, are barred in whole or in part by the doctrine of unclean hands.

#### SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff claims, and each of them, are barred by the applicable statutes of limitations.

#### SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims based on contracts are each barred by the Statute of Frauds.

#### EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint and each and every Cause of Action therein, and specifically its claims based on the "Staffing Services Contract" are barred because of Plaintiff's concealment of the organized campaign described therein, and Plaintiff's failure to afford Defendant RSG the opportunity to participate in defense strategy or decisions made entirely by Plaintiff which resulted in the alleged liability.

#### **NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff's Complaint and each and every Cause of Action therein, are barred in whole or in part because Plaintiff imposed undue duress upon Defendant RSG by insisting that it be responsible for events and Plaintiff's unilateral volitional conduct in which Plaintiff had no part.

## TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff was wholly responsible for all decisions leading to events and conduct alleged by the NLRB to be unfair labor practices and which Plaintiff settled without Defendant RSG's participation, and is therefor estopped to deny its sole responsibility for the consequences of said decisions.

TWENTY FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state facts sufficient to support an award of punitive damages against Defendant RSG, because it failed to consult with and permit defendant RSG an opportunity to determine how to respond to the organizing campaign and unfair labor practice charges for which it now seeks indemnification, waived its ability to hold Defendant RSG responsible in any manner and was itself liable for all of its own conduct, including the settlement, and attorneys fees and expenses associated with those matters.

TWENTY SECOND AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state facts sufficient to support an award of punitive damages against Defendant RSG.

WHEREFORE, Defendant RSG prays that:

1. Plaintiff's Complaint be dismissed in its entirety with prejudice and that Plaintiff take nothing by this action;
2. The Court issue judgment in favor of Defendant RSG;
3. Defendant RSG be awarded costs of suit, including reasonable attorney's fees, in accordance with paragraph VI (Indemnification) and XVIII (Attorneys Fees) of the "Staffing Services Contract."
4. The Court award Defendant RSG its attorney's fees and costs, as sanctions pursuant to FRCP Rule 11.
5. That the Court provide such other and further relief as it deems just and proper;

DATED: July 30, 2007

MILLER & ANGSTADT

Respectfully submitted,

By

  
 David Miller  
 Attorney for Defendants  
 NORTHWEST STAFFING RESOURCES,  
 INC., RESOURCE STAFFING GROUP,  
 INC., and DULCICH STAFFING, LLC

**PROOF OF SERVICE [C.C.P. Sections 1005, 1013a(3), 2015.5]**

I am a citizen of the United States. My business address is 1910 Olympic Blvd., Suite 220, Walnut Creek, California 94596. I am employed in the County of Contra Costa where this service occurs. I am over the age of 18 years and not a party to the within action. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same as the day of collection in the ordinary course of business.

On the date set forth below, following ordinary business practice, I served the foregoing document(s) described as:

**ANSWER OF DEFENDANT RESOURCE STAFFING GROUP, INC., an Oregon corporation TO COMPLAINT FOR DAMAGES, RESTITUTION, INJUNCTIVE AND DECLARATORY RELIEF FOR FRAUDULENT INDUCEMENT; FRAUD; UNLAWFUL, UNFAIR BUSINESS PRACTICES; FALSE AND MISLEADING ADVERTISING; AIDING AND ABETTING/INDUCING CONSPIRACY TO VIOLATE; BREACH OF CONTRACT; CONTRACTUAL INDEMNITY and EQUITABLE INDEMNITY AND CONTRIBUTION**

on said date at my place of business, a true and correct copy thereof enclosed in a sealed envelope prepaid for first-class mail for collection and mailing that same day in the ordinary course of business, addressed to the parties as follows:

Robert Yonowitz, Esq.  
Stacey A. Zartler, Esq.  
Fisher and Phillips, LLP  
One Embarcadero Center, Suite 2340  
San Francisco, California 94111-3712

**(BY MAIL)** I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Walnut Creek, California.

**(BY FACSIMILE)** I transmitted a true and correct copy by facsimile to the number indicated above.

**(BY PERSONAL SERVICE)** I caused such envelope(s) to be delivered by hand this date to the offices of the addressee(s) as listed above.

**(BY OVERNIGHT DELIVERY)** I caused such envelope(s) to be delivered to an overnight delivery carrier with the delivery fees provided for, addressed to the person(s) on whom it is to be served as shown above.

**(FEDERAL)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 30 2007 at Walnut Creek, California

Melissa DeVay  
Melissa DeVay